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7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4434

11 **BERTA A. ARELLANO**
12 **720 Humbolt Drive**
13 **Dixon, CA 95620**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 27927**

15 Respondent.

16 Complainant alleges:

17
18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about December 23, 1998, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 27927 to Berta A. Arellano (Respondent). The License was in force and effect
23 at all times relevant to the charges herein and will expire on March 31, 2014, unless renewed.

24
25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period.

12
13 STATUTORY AND REGULATORY PROVISIONS

14 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
15 against any holder of a license who is guilty of “unprofessional conduct,” defined to include, but
16 not be limited to, any of the following:

17 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
18 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
19 whether the act is a felony or misdemeanor or not.

20 (g) Knowingly making or signing any certificate or other document that falsely represents
21 the existence or nonexistence of a state of facts.

22 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
23 of a licensee under this chapter.

24 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
25 revoke a license when it finds that the licensee has been convicted of a crime substantially related
26 to the qualifications, functions or duties of the license.

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9. California Code of Regulations, title 16, section 1770, states:

“For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by her license or registration in a manner consistent with the public health, safety, or welfare.”

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

FACTUAL BACKGROUND

11. Between on or about August 12, 2010 and on or about January 9, 2011, Respondent gained access to checks drawing on the account of another person (M.E.D.A.¹), and made use of that access to forge checks payable to herself or others on her behalf and/or to pass or cash checks drawn on this account payable to herself or others on her behalf. The total number of checks that were fraudulently made by Respondent on the victim's account is not known, but it was at least forty-nine (49) checks, for a total dollar amount of at least \$26,950.00.

12. On or about June 16, 2011, on the basis of the conduct described in paragraph 11, in a case titled *People v. Berta A. Villasenor aka Berta A. Arellano aka Berta A. Vallasenor*, Case No. FCR283076 in Solano County Superior Court, Respondent was convicted of violating Penal Code section 476 (Forgery), a felony. The circumstances of the conviction are described further below.

13. On or about November 9, 2011, Respondent cashed a fictitious or fraudulent check in the amount of \$3,462.00 at a grocery store located in Dixon, CA. The check was drawn on the account of a company that stated the account was the subject of a prior theft or fraud, and that the company had since changed its account information with the financial institution.

¹ The victim's full name will be provided to Respondent in discovery.

14. On or about November 28, 2011, on the basis of the conduct described in paragraph 13, in a case titled *People v. Berta Villasenor aka Berta A. Arellano aka Berta A. Vallasenor aka Berta Alicia Villasenor*, Case No. FCR 289166 in Solano County Superior Court, Respondent was charged with violating (1) Penal Code section 476 (Forgery), (2) Penal Code section 487(a) (Grand Theft of Personal Property), (3) Penal Code section 532(a) (Obtaining Money, Labor, or Property by False Pretenses), and (4) Penal Code section 459 (2nd Degree Commercial Burglary).

15. On or about March 1, 2012, Respondent signed and returned to the Board a request to renew her License. In response to a question asking whether Respondent had been convicted of any crime since she last renewed her license, Respondent checked the box marked "NO."

FIRST CAUSE FOR DISCIPLINE

(Act(s) Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

16. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 11 to 15 above, committed one or more acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SECOND CAUSE FOR DISCIPLINE

(Making or Signing False Documents(s))

17. Respondent is subject to discipline under section 4301(g) of the Code in that Respondent, as described in paragraphs 11 to 15 above, made or signed document(s) falsely representing the existence or nonexistence of a state of facts.

THIRD CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

18. Respondent is subject to discipline under section 4301(I) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about June 16, 2011, in a criminal case titled *People v. Berta A. Villasenor aka Berta A. Arellano aka Berta A. Vallasenor*, Case No. FCR283076 in Solano County Superior Court, Respondent was convicted of violating Penal Code section 476 (Forgery), a felony. The conviction was entered as follows:

1 a. On or about March 7, 2011, on the basis of the conduct described in paragraph
2 11, Respondent was charged by Felony Complaint in Case No. FCR283076 with one count of
3 violating Penal Code section 476 (Forgery), a felony, with additional allegations that Respondent
4 committed aggravating acts pursuant to California Rules of Court, rules 4.408 and 4.421;

5 b. On or about June 16, 2011, Respondent pleaded nolo contendere and was found
6 guilty in Case No. FCR283076 of violating Penal Code section 476 (Forgery), a felony;

7 c. On or about July 14, 2011, the court ordered imposition of sentence suspended
8 in Case No. FCR283076 in favor of a period of formal probation of five (5) years, with terms and
9 conditions including 30 days in jail (1 day CTS), restitution of \$26,950.00, fines and fees;

10 d. On or about November 28, 2011, based on the conduct described in paragraph
11 13, in a case titled *People v. Berta Villasenor aka Berta A. Arellano aka Berta A. Vallasenor aka*
12 *Berta Alicia Villasenor*, Case No. FCR 289166 in Solano County Superior Court, Respondent
13 was charged with violating (1) Penal Code section 476 (Forgery), (2) Penal Code section 487(a)
14 (Grand Theft of Personal Property), (3) Penal Code section 532(a) (Obtaining Money, Labor, or
15 Property by False Pretenses), and (4) Penal Code section 459 (2nd Degree Commercial Burglary);

16 e. On or about June 18, 2012, all charges in Case No. FCR289166 were dismissed
17 pursuant to a Harvey waiver entered from Respondent allowing their consideration in Case No.
18 FCR283076. On that same date, the probation ordered in Case No. FCR283076 was reinstated
19 and modified, to continue as ordered on July 14, 2011 except that an additional term was added
20 requiring payment by Respondent of restitution to the grocery store of \$3,462.00.

21 FOURTH CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct)

23 19. Respondent is subject to discipline under section 4301 of the Code in that
24 Respondent, as described in paragraphs 11 to 18 above, engaged in unprofessional conduct.

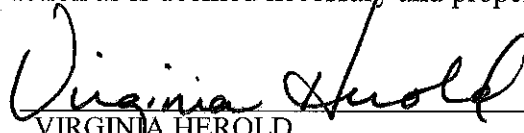
25 PRAYER

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
28

- 1 1. Revoking or suspending Pharmacy Technician License No. TCH 27927, issued to
- 2 Berta A. Arellano (Respondent);
- 3 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
- 4 enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 5 3. Taking such other and further action as is deemed necessary and proper.

6 DATED: _____

7 1/7/13

8 

9 VIRGINIA HEROLD
10 Executive Officer
11 Board of Pharmacy
12 Department of Consumer Affairs
13 State of California
14 Complainant

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